

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:

CASE: A18-68685-SMS

REGINALD WENDALL PRESTON

CHAPTER 13

Debtor

Motion to Dismiss Pursuant to 11 U.S.C. § 109(h)

COMES NOW Mary Ida Townson, Standing Chapter 13 Trustee herein, and files this her Motion to Dismiss Pursuant to 11 U.S.C. § 109(h), respectfully showing the Court the following.

1.

The Debtor filed for relief under Chapter 13 of Title 11 on November 05, 2018.

2.

Section 109(h), as added to the United States Bankruptcy Code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, requires that an individual obtain credit counseling within the 180-day period preceding the date of filing in order to be eligible for relief under Title 11 of the United States Code. 11 U.S.C. § 109(h).

3.

The above-referenced counseling must be obtained from a nonprofit budget and credit counseling agency approved by the United States Trustee and a certificate from the approved agency that provided the credit counseling must be filed with the Court. 11 U.S.C. §§ 111 and 521(b).

4.

Section 109(h)(3) provides a waiver of the credit counseling requirement to individuals with exigent circumstances. 11 U.S.C. § 109(h)(3). To obtain this waiver, an individual must file a certification with the Court that:

- i. describes the exigent circumstances that merit a waiver;
- ii. states that he or she requested credit counseling services from an approved credit counseling agency, but was unable to obtain said services during the five-day period beginning on the date on which he or she made the request; and
- iii. is satisfactory to the Court.

5.

According to the Court's docket, neither a certificate from an approved agency nor a certificate of exigent circumstances has been filed with the Court.

6.

As the requirements of 11 U.S.C. § 109(h) have not been met, the Debtor is not eligible for relief under Title 11 of the United States Code.

WHEREFORE, based on the foregoing, the Trustee respectfully requests the Court inquire into the foregoing, dismiss the instant case pursuant to 11 U.S.C. §§ 105(a) and 109(h); or in the alternative, convert this case to one under Chapter 7.

Dated: November 12, 2018

Respectfully submitted,

/s/ _____
K. Edward Safir, Attorney
for the Chapter 13 Trustee
GA Bar No. 622149
191 Peachtree Street, Suite 2200
Atlanta, GA 30303
(404) 525-1110
eds@atlch13tt.com

UNITED STATES BANKRUPTCY COURT
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IN RE:

CASE: A18-68685-SMS

REGINALD WENDALL PRESTON

CHAPTER 13

Debtor

Notice of Hearing on Motion to Dismiss Pursuant to 11 U.S.C. § 109(h)

PLEASE TAKE NOTE that the Chapter 13 Trustee has filed a Motion to Dismiss Pursuant to 11 U.S.C. § 109(h) and related exhibits with the Court seeking an order of dismissal.

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on **December 18, 2018** at **10:00 am** in **Courtroom 1201, Richard Russell Building, 75 Ted Turner Drive, SW, Atlanta, GA, 30303**.

Your rights may be affected by the Court's ruling on these pleadings. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one). If you do not want the Court to grant the relief sought in these pleadings or if you want the Court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how and on whom (including address) you served the response. Mail or deliver your response so that it is received by the Clerk at least two (2) business days before the hearing. The address of the Clerk's Office is **Clerk, U.S. Bankruptcy Court, Richard Russell Building, 75 Ted Turner Drive, SW, Atlanta, GA, 30303**. You must also mail a copy of your response to the undersigned at the address stated below.

Dated: November 12, 2018

Respectfully submitted,

/s/ _____
K. Edward Safir, Attorney
for the Chapter 13 Trustee

A18-68685-SMS

CERTIFICATE OF SERVICE

This is to certify that I have this day served the following with a copy of the foregoing pleading depositing same in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon.

REGINALD WENDALL PRESTON
620 - PENNEYLAKE LANE
STONE MOUNTAIN, GA 30087

Dated: November 15, 2018

Respectfully submitted,

/s/

K. Edward Safir, Attorney
for the Chapter 13 Trustee
GA Bar No. 622149
191 Peachtree Street, Suite 2200
Atlanta, GA 30303
(404) 525-1110
eds@atlch13tt.com